

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

PHILLIP JAMES HAHL,

Petitioner,

v.

Civil No. 2:06-CV-15258

HONORABLE PAUL D. BORMAN

UNITED STATES DISTRICT JUDGE

STATE OF MICHIGAN (John Prelesnik),

Respondent,

_____ /

OPINION AND ORDER OF SUMMARY DISMISSAL

Phillip James Hahl, (“Petitioner”), presently confined in the Mid-Michigan Correctional Facility in St. Louis, Michigan, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On December 27, 2006, Magistrate Judge R. Steven Whalen signed an “Order to Correct Deficiency,” in which petitioner was ordered to submit a \$ 5.00 fee for filing a habeas corpus petition or an application to proceed *in forma pauperis* within twenty one days of the order. For the reasons stated below, Petitioner’s action is dismissed without prejudice because of petitioner’s failure to comply with an order of the court.

I. Discussion

Petitioner’s application is subject to dismissal, because he failed to comply with the order of deficiency by either submitting the \$ 5.00 filing fee or an application to proceed *in forma pauperis*.

If a prisoner who seeks habeas corpus relief does not comply with a district court's directions in a deficiency order, regarding the prisoner's failure to pay the full filing fee and his failure to provide the required documentation to apply to proceed *in forma pauperis*, the district court must presume that the prisoner is not a pauper, assess the full filing fee, and dismiss the case for want of prosecution. *See Gravitt v. Tyszkiewicz*, 14 Fed. Appx. 348, 349 (6th Cir. 2001)(citing *McGore v. Wigglesworth*, 114 F. 3d 601, 605 (6th Cir. 1997)). The deficiency order clearly stated that petitioner was required to submit either the \$ 5.00 filing fee or an application to proceed *in forma pauperis*. The deficiency order also expressly warned petitioner that failure to comply with the order could result in the dismissal of his action. Because petitioner failed to pay the filing fee or submit the required application to proceed *in forma pauperis*, his petition is subject to dismissal for want of prosecution. *Gravitt*, 14 Fed. Appx. at 349; *See also Bischoff v. Genesis House*, 2006 WL 752755, * 1 (E.D. Mich. March 21, 2006).

II. ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus is DISMISSED WITHOUT PREJUDICE. Nothing in this order precludes petitioner from submitting a new habeas petition with payment of the filing fee or the *in forma pauperis* application.

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: February 20, 2007

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on February 20, 2007.

s/Denise Goodine

Case Manager